

connection with the Hair Test used by the defendants in making employment decisions.

- Paragraph 9 of the Proposed Amended Complaint corrects the prior statement concerning when this case was filed -- i.e., within three years (rather than two years) of the acts alleged.
- Paragraph 31 of the Proposed Amended Complaint has been revised to simplify and clarify the prior allegations by reducing them to essentials.

Argument

3. Rule 15(a), by its terms, mandates that leave to amend “shall be freely given when justice so requires.” In interpreting the rule, the Supreme Court has counseled as follows:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the Rules require, be “freely given.”

Foman v. Davis, 371 U.S. 178, 182 (1962).

4. None of the factors counseling against granting leave to amend are here. Plaintiffs are not acting in bad faith; moreover, because the proceedings are in the preliminary stages, with discovery in its infancy, the defendants will not be unduly delayed or prejudiced by the granting of this motion. Indeed, as discussed at the recent Rule 16 scheduling conference, it is anticipated that plaintiff-specific discovery will not get underway until later in the proceedings.

5. In addition, Rule 15(d) permits the Court to grant leave to supplement the Complaint to set forth “transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.” Leave to supplement is appropriate here because events have occurred since the original complaint was filed that pertain to the same cause and are

based upon the same subject matter as set out in the original Complaint. *See United States v. Russell*, 241 F.2d 879, 882 (1st Cir. 1957).

6. As noted, the Proposed Amended Complaint asserts no new causes of action or claims for relief. The relief requested herein serves judicial economy (as well as the interests of justice) by including in this action allegations and claims that are identical to those contained in the original Complaint but that, absent the requested relief, would have to be asserted in a separate action, which plaintiffs would then seek to consolidate with this case.

7. Local Rule 15.1(a) states that amendments adding parties shall be pursued as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party. As noted above, Ms. Hogan and Ms. Couch wished to be included as plaintiffs at the time the Complaint was filed but could not be so included because they did not have Right to Sue letters from the EEOC at that time. The Proposed Amended Complaint is timely filed after receipt of these letters.

8. Counsel to the parties have conferred, as required by Local Rule 7.1(A)(2), but defendants have not indicated whether or not they will oppose the motion.

Conclusion

WHEREFORE, for the foregoing reasons, plaintiffs respectfully request that the Court (a) grant the instant Motion to Amend and Supplement the Complaint and (b) grant any such other relief as the Court deems just and proper.

Respectfully submitted,

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